

# HOUSE BILL REPORT

## 2SHB 2663

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### As Passed Legislature

**Title:** An act relating to occupational diseases affecting fire fighters.

**Brief Description:** Changing conditions that are presumed to be occupational diseases of fire fighters.

**Sponsors:** By House Committee on Appropriations (originally sponsored by Representatives Conway, Clements, Cooper, Reardon, Sullivan, Delvin, Simpson, Armstrong, Hankins, Benson, Cairnes, Lysen, Kirby, Edwards, Chase, Kenney, Campbell, Barlean, Santos, Talcott, Wood and Rockefeller).

### Brief History:

#### Committee Activity:

Commerce & Labor: 1/28/02, 2/6/02 [DPS];

Appropriations: 2/9/02, 2/11/02 [DP2S(w/o sub CL)].

#### Floor Activity:

Passed House: 2/14/02, 98-0.

Senate Amended.

Passed Senate: 3/7/02, 48-0.

House Concurred.

Passed House: 3/11/02, 94-0.

Passed Legislature.

### Brief Summary of Second Substitute Bill

- Adds certain heart problems, specified cancers, and infectious diseases to the list of conditions that are presumed to be occupational diseases for fire fighters covered under the industrial insurance law.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Clements, Ranking Minority Member; Kenney and Lysen.

**Minority Report:** Do not pass. Signed by 1 member: Representative Chandler.

**Staff:** Chris Cordes (786-7103).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Commerce & Labor. Signed by 25 members: Representatives Sommers, Chair; Doumit, 1st Vice Chair; Fromhold, 2nd Vice Chair; Sehlin, Ranking Minority Member; Alexander, Boldt, Buck, Clements, Cody, Cox, Dunshee, Grant, Kagi, Kenney, Kessler, Linville, Lisk, Mastin, McIntire, Pearson, Pflug, Ruderman, Schual-Berke, Talcott and Tokuda.

**Staff:** Linda Brooks (786-7153).

### **Background:**

A worker who, in the course of employment, is injured or suffers disability from an occupational disease is entitled to benefits under Washington's industrial insurance law. To prove an occupational disease, the injured worker must show that the disease arose "naturally and proximately" out of employment.

Members of the law enforcement officers' and fire fighters' retirement system plan II (LEOFF II) are covered for workplace injuries and occupational diseases under the industrial insurance law. For LEOFF II supervisory and actively employed full-time fire fighters, the industrial insurance law provides a presumption that respiratory diseases are occupational diseases. This presumption may be rebutted by a preponderance of controverting evidence, including the use of tobacco products, physical fitness, lifestyle, hereditary factors, and exposure from other employment or nonemployment activities. The presumption extends to a covered fire fighter for up to five years after terminating service (three months for each year of service).

A number of states have presumptions to establish that cancer, heart disease, various infectious diseases, or other conditions are work-related under disability or workers' compensation laws.

### **Summary of Second Substitute Bill:**

Legislative findings are made concerning the exposure of fire fighters to hazardous substances in fire environments and the increased risk for various conditions.

The industrial insurance law is amended to add three new categories to the list of diseases presumed to be occupational diseases for specified fire fighters:

- heart problems experienced within 72 hours of exposure to smoke, fumes, or toxic substances;

- primary brain cancer, malignant melanoma, leukemia, non-Hodgkin's lymphoma and bladder, ureter, and kidney cancer. To be covered, an active or former fire fighter must have cancer that developed or manifested itself after at least 10 years of service and must have had a qualifying medical examination at the time of becoming a fire fighter that showed no evidence of cancer;
- infectious diseases. "Infectious disease" means HIV/acquired immunodeficiency syndrome, all strains of hepatitis, meningococcal meningitis, and mycobacterium tuberculosis.

These new presumptions apply to supervisory and active full-time fire fighters in public employment who are covered by industrial insurance. In addition, the existing presumption for respiratory disease and the new presumptions apply to full-time, fully compensated fire fighters, including supervisors, employed by a private sector employer's fire department that has more than 50 fire fighters.

Beginning July 1, 2003, the occupational disease presumptions do not apply to a fire fighter who develops a heart or lung condition and is a regular user of tobacco products or has a history of tobacco use. The extent of tobacco use that excludes a fire fighter from the presumption must be defined in administrative rule.

**Appropriation:** None.

**Fiscal Note:** Requested February 11, 2002 on the substitute bill.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** (Commerce & Labor) There are onerous requirements under the industrial insurance law for fire fighters to prove an occupational disease. In some cases, lengthy investigations cannot show any other possible source of exposure, other than work. It is costly for both sides to develop proof that can meet the required standard. There will never be a perfect correlation between the exposure and the disease that develops.

**Testimony For:** (Appropriations) This bill is a work in progress. The cancers will be redefined in a substitute that's being drafted. We have already worked on the list of infectious diseases. We are trying to get to a bill that our employers can support.

(Concerns) The Fire Commissioners' Association has been working to get this bill to a point where we can support it. There has been progress made on infectious diseases, and we're working on the cancers. We have two remaining issues. One, we would like to remove the presumption that heart or lung disease is an occupational disease for firefighters who are regular smokers. Two, we know the state is in a fiscal bind, and that you know the local governments are in a bind as well. We won't say that we have

to have money, but every little bit (that may be provided) helps.

**Testimony Against:** (Commerce & Labor) Some scientific evidence is needed to justify covering a condition as an occupational disease. The costs are uncertain and this is not a good time to impose greater costs on local governments when revenues are being dramatically reduced. The bill is too broad because it covers conditions for which no correlation to fire fighting exposure is known. With a liberal construction clause under industrial insurance and other protections, fire fighters are already able to make their case for coverage.

**Testimony Against:** (Appropriations) We appreciate the work that has been done to narrow the list of infectious diseases. We would like a minor change to the standard for rebuttal so that it reads as, "This presumption of occupational disease may be rebutted by a preponderance of the evidence." We oppose the bill because of the fiscal note. The local government fiscal note indicates that the employers' rates paid to the accident and medical aid funds would double. When you add the cost of the rates doubling to the costs incurred by local governments that are self-insured, you get to the \$4.5 million hit per year on local governments.

**Testified:** (Commerce & Labor) (In support) Kelly Fox, Washington State Council of Fire Fighters; and Jeff Bunnell.

(Opposed) Roger Ferris, Washington Fire Commissioners Association; and Jim Justin, Association of Washington Cities.

**Testified:** (Appropriations) (In support) Kelly Fox, Washington State Council of Fire Fighters.

(Concerns) Ryan Spiller, Washington Fire Commissioners Association.

(Opposed) Jim Justin, Association of Washington Cities; and Ryan Spiller, A Foreign Affair.